

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BILL H. DOMINGUEZ, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

YAHOO!, INC.

Defendant.

C.A. No. 2:13-cv-01887

**SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF YAHOO!  
INC.'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and the rules of this court, defendant Yahoo! Inc. ("Yahoo!") hereby submits the following statement of undisputed material facts in support of its Motion for Summary Judgment.

<b><u>UNDISPUTED MATERIAL FACT</u></b>	<b><u>SUPPORTING EVIDENCE</u></b>
<b>A. THE MESSAGES AT ISSUE IN THIS CASE WERE NOT SENT USING AN ATDS</b>	
1. The system that was used in connection with sending the text messages to plaintiff at issue in this case is not an Automatic Telephone Dialing System as that term is defined in 47 U.S.C. § 227(a)(1) because it is not equipment that has the capacity to store or produce numbers to be called using a random or sequential number generator, and to dial such numbers.	Declaration of Ajay Gopalkrishna ("Gopalkrishna Decl.") ¶¶ 12-13.
<b>B. THE MESSAGES AT ISSUE ARE NOT ACTIONABLE UNDER THE TCPA</b>	
2. Yahoo formerly provided email account users with the option to forward new, incoming email messages to a mobile	Gopalkrishna Decl. ¶ 4

phone (the "Email SMS Service").	Complaint ¶¶ 16-19
3. Unless a Yahoo! user affirmatively signed up for the Email SMS Service, he or she would not receive a text messages version of new emails.	Gopalkrishna Decl. ¶ 8.
4. Yahoo! email account users would have to provide their cell phone number in connection with their request for the Email SMS Service.	Gopalkrishna Decl. ¶ 5.
5. The text messages plaintiff received were sent to the number provided by a Yahoo! user when he elected to receive text message alerts.	Gopalkrishna Decl. ¶¶ 9-11.
6. The text messages plaintiff received were not sent by Yahoo! randomly, in bulk and were not advertisements.	Gopalkrishna Decl. ¶¶ 7, 12.

Respectfully submitted,

Dated: June 18, 2013

GREENBERG TRAURIG LLP

By: /s/ Brian T. Feeney

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**CERTIFICATE OF SERVICE**

I, Brian T. Feeney, attorney for Defendants, hereby certify that on June 18, 2013, I served a true and correct copy of the foregoing Separate Statement of Undisputed Facts in Support of YAHOO!, Inc.'s Motion for Summary Judgment via this Court's Electronic Court Filing System upon the following counsel of record:

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